Supreme Court, U.S.
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No. 91-1518

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

LILLIE E. PARKER, *et al.*, and SIMILARLY SITUATED UNNAMED PLAINTIFFS,
Petitioners,

v.

GWENDOLYN KING, Commissioner of the Social Security Administration, LOUIS SULLIVAN, Secretary, Department of Health and Human Services, and the UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeal for the Eleventh Circuit

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SUPPLEMENTAL BRIEF FOR PETITIONERS

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In our reply brief (Pet. Reply Br. 5, n.3), petitioners pointed out that this Court's resolution of *American National Red Cross v. S.G. & A.E.*, No. 91-594, would be highly relevant to disposition of the instant case. The Court decided *American National Red Cross* on June 19, 1992. Its holding in that case strongly supports petitioners' position.

1. In *American National Red Cross*, this Court held that the charter of the American National Red Cross authorizing that organization "to sue and be sued in courts of law and equity, State or Federal, within the jurisdiction of the United States" conferred original

jurisdiction on federal courts over all cases to which the Red Cross is a party. *See* 36 U.S.C. 2. The Court instructed that federal court jurisdiction is provided by such a provision "if, but only if, it specifically mentions the federal courts." Slip op. at 8.

2. This Court's holding in *American National Red Cross* dooms the government's contention in the instant case that the Tucker Act provides the sole basis of jurisdiction over petitioners' claims. As we have stated (Pet. Reply Br. 5, n.3), 29 U.S.C. 16(b)'s waiver of sovereign immunity in all material respects mirrors the relevant language at issue in *American National Red Cross*. Hence, section 16(b) of the FLSA states that "an action . . . may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees. . ." 29 U.S.C. 216(b). In short, like the provision at issue in *American National Red Cross*, section 16(b)'s waiver of sovereign immunity "specifically mentions the federal courts" (slip op. at 8), and thus it, too, provides federal courts with original jurisdiction over claims such as petitioners'.

3. Indeed, even the objections of the dissent in *American National Red Cross* are not a concern in the instant case. Justice Scalia's dissent viewed 36 U.S.C. 2 as conferring only the capacity to sue or be sued. Dissenting op. at 4. At the same time, however, the dissent, in analyzing this Court's precedent, specified that a provision authorizing actions to be *brought* in federal court *was* jurisdictional. Dissenting op. at 5-6. Even under the dissent's view, 29 U.S.C. 216(b) confers jurisdiction on federal district courts. As stated, section 16(b) specifically provides that an overtime *"action . . . may be maintained* against any employer (including a public agency) in any Federal or State court of competent jurisdiction. . ." 29 U.S.C. 216(b) (emphasis added).

4. In sum, as we have pointed out (Pet. Reply Br. 5, n.3), petitioners' jurisdictional argument is even stronger than the successful contentions made in *American National Red Cross*. To the extent that section 16(b) of the FLSA does not, by itself, confer jurisdiction on federal district courts, petitioners have argued that district courts certainly possess jurisdiction over claims, such as theirs, when that provision is read in conjunction with 28 U.S.C. 1331. Whether jurisdiction is conferred by 29 U.S.C. 216(b) alone, or in combination with 28 U.S.C. 1331, the salient point is that district court jurisdiction over petitioners' claims existed independent of the Tucker Act. The ruling of the court below now stands in conflict, not only with this Court's decision in *Bowen v. Massachusetts*, 487 U.S. 879 (1988), but also with its most recent holding in *American National Red Cross*.[1]

Respectfully submitted,

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[1] If the petition for a writ of certiorari is not granted, this case should be remanded to the Eleventh Circuit with an instruction that it reconsider its decision in light of this Court's holding in *American National Red Cross, supra*.